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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/015,314	12/11/2001	David Allen Loewenstein	FERN-P008	2903

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EXAMINER

RADA, ALEX P

ART UNIT	PAPER NUMBER
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3714

DATE MAILED: 12/20/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/015,314

Applicant(s)

LOEWENSTEIN, DAVID ALLEN

Examiner

Alex P. Rada

Art Unit

3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Drawings***

1. This application has been filed with informal drawings, which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, the phrase, "A video poker game that has a four sided, diamond shaped display" is vague and indefinite because the diamond shaped display cannot be determined. Is the display itself "diamond shape" or the contents on the display screen in a "diamond shape"?

Claim 1 recites the limitation "the corner" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "the player" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim 10 recites the limitation "the corner" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 10 recites the limitation "the player" in line 3. There is insufficient antecedent basis for this limitation in the claim.

### ***Double Patenting***

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 1-19 provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-21 of copending Application No. 10/211063. Although the conflicting claims are not identical, they are not patentably distinct from each other because having to display a card game on a display screen is known in the art and the examiner takes official notice that having cards arranged on a display is to provide a graphical representation of the objects (i.e. the different card configurations) of a game being played. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the

invention was made to combine the game of claims 1-21 of copending Application No. 10/211063 with the official notice taken above to provide a game machine capable of playing various card games in entertaining manner.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 17 and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by Gajor '456.

8. Gajor discloses a video poker game having one or more pair of hands with five cards in each hand, each hand consists of three interior cards and two end cards that are common to each pair of hands, the three interior cards can be exchanged with interior cards between hands as recited in claim 17; the two pairs of hand are dealt so that each hand has three interior cards and each pair of hands shares common end cards as recited in claim 19.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1-14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gajor '456 in view of Chilese '909.

11. Gajor discloses a video poker game having four sides, each side has five cards, the corner cards are shared with two adjacent hands, exchanging cards from one hand to another hand, and resulting hands are compared to a pay table as recited in claims 1 and 10; the corner cards can be exchanged as recited in claims 4, 15 and 16; a center card is dealt that is a wild card as recited in claims 7 and 13-14; all of the cards are dealt face up as recited in claim 12. Gajor does not expressly disclose a diamond shaped display as recited in claims 1 and 10; a six-sided shape is used instead of a four-sided shape, a eight-sided shaped is used instead of a four-sided shape, and a ten-sided shape is used instead of a four-sided shape as recited in claims 5, 8, and 9-10.

Chilese teaches a card game having different shapes. By having different kinds of configurations of cards in a game, one of ordinary skill in the art would be able to provide game players with the possibilities of a better outcome. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the applicant's invention was made to modify Gajor to include a diamond shaped, a six-sided shape is used instead of a four-sided shape, a eight-sided shaped is used instead of a four-sided shape, and a ten-sided shape is used instead of a four-sided shape as taught by Chilese. To do so would be able game players to simultaneously evaluate for the highest value.

For the purpose rejection of claims 2-3, 6, and 11 it would have been obvious to one of ordinary skill in the art to designate which card or cards are dealt face up or down to provide game players with different possibilities for a better payout.

12. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gajor '456 in view of Chilese '909 as applied to claim 10 above, and further in view of Wächtler '208.

13. Gajor in view of Chilese disclose the claimed invention as discussed above except for the player must pay for each card exchange. Wächtler teaches the method of paying for each card exchanged. By paying for each card exchange, one of ordinary skill in the art would be able to provide game players with the opportunity to increase the chance of a bigger payout outcome. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Gajor to include paying for each card exchange as taught by Wächtler. To do so would be able to provide an opportunity for a guaranteed payout outcome.

14. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gajor '456.

15. Gajor discloses the claimed invention as discussed above except for the end cards are dealt face down and are revealed after the player has exchanged cards. By having specific card(s) dealt face up or down depending on a particular outcome, it would have been obvious to one of ordinary skill in the art to provide game player with different possibilities of a better outcome. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to include end cards that are dealt face down and are revealed after the player has exchanged cards to provide game players a possible guaranteed payout outcome.

*Conclusion*

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Miller `445 discloses a method of playing a multi-line poker game of cards on a compute-based video gaming device.

Ferguson `405 discloses a method of simultaneously playing multiple hands of poker game dealt from a single deck.


Wood `593 discloses a player dealt an initial hand of five cards and the player is offered the opportunity to swap certain of the first five initially dealt card for a different card.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alex P. Rada whose telephone number is 703-308-7135. The examiner can normally be reached on Monday - Friday, 08:00-16:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Hughes can be reached on 703-308-1806. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

APR  
apr  
December 18, 2002

  
S. THOMAS HUGHES  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700